

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

LARRY W. McKENZIE, #K4202

PETITIONER

VERSUS

CIVIL ACTION NO. 4:07cv25-DPJ-JCS

FRANKLIN BREWER, Warden, *et al.*

RESPONDENTS

ORDER

This matter comes before this court, *sua sponte*, for consideration of the transfer of this cause. The petitioner, an inmate currently incarcerated in the Stone County Regional Correctional Facility, Wiggins, Mississippi, filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254. Petitioner states that on September 27, 2000, he was convicted of rape in the Circuit Court of Lauderdale County, Mississippi. He was then sentenced to serve a term in the custody of the Mississippi Department of Corrections as well as post-release supervision.

The petitioner has previously filed for habeas relief in this court challenging the same conviction, *McKenzie v. Brewer*, 4:04cv26-TSL-AGN (S.D. Miss. Oct. 15, 2004). On October 15, 2004, this court entered a final judgment dismissing the action with prejudice. The petitioner filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit on October 29, 2004. Subsequently, the Fifth Circuit denied his request for a certificate of appealability and dismissed his appeal. *McKenzie v. Brewer*, No. 04-60997 (5th Cir. June 23, 2005).

A petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate court of appeals for an order authorizing the district court to consider

the successive motion. 28 U.S.C. § 2244(b)(3)(A). In the case at bar, the petitioner has failed to submit any documentation demonstrating that he has obtained the required authorization from the United States Court of Appeals for the Fifth Circuit. Therefore, this Court has determined that in the interest of justice this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive or second petition should be allowed. *See In Re Epps*, 127 F.3d 364 (5th Cir. 1997); 28 U.S.C. § 1631. Accordingly, it is hereby,

ORDERED that this petition for habeas corpus relief be, and the same hereby is, transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED that the clerk of this court is directed terminate all pending motions and to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED AND ADJUDGED this the 8th day of March, 2007.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE